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### **Advisory Opinion 13-013**

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2013). It is based on the facts and information available to the Commissioner as described below.

#### **Facts and Procedural History:**

On July 17, 2013, the Information Policy Analysis Division (IPAD) received an advisory opinion request from Dawn Speltz, attorney for the City of Spring Lake Park. In her letter, Ms. Speltz asked the Commissioner to issue an advisory opinion regarding classification of certain data that the City would like to collect and administer.

On behalf of the Commissioner, IPAD wrote to Department of Public Safety Commissioner, Mona Dohman. The purpose of this letter, dated July 19, 2013, was to invite her to provide comments. Commissioner Dohman did not submit comments.

A summary of the facts as Ms. Speltz provided, follows. The City of Spring Lake Park is considering options to allow individuals who commit traffic offenses to participate in an online education program in lieu of appearing in court. In the course of these discussions, a question arose regarding the classification of the data involved.

In her request, Ms. Speltz described the program and the data:

To utilize the traffic education programs, the data collected at the time of the traffic offense to issue the resulting citation, including data on the individual and their driver's license information would be submitted to the vendor of the traffic education program's server at the time of the traffic stop. This data would be submitted by swiping the offender's driver's license, and the data contained on the mag stripe would be submitted to the vendor and maintained on their server, to allow the vendor to verify that the individual qualifies for the program, and to access the applicable information to allow the offender to complete the program online through the vendor's website. No data is transmitted to or from [the Department of Public Safety] as part of this process.

#### **Issue:**

Based on Ms. Speltz's opinion request, the Commissioner agreed to address the following issue:

Pursuant to Minnesota Statutes, Chapter 13, what is the classification of the data on a driver's license magnetic stripe and a driving citation, collected, created, or maintained by the Spring Lake Park Police Department?

**Discussion:**

Pursuant to Minnesota Statutes, Chapter 13, government data are public unless otherwise classified. (Minnesota Statutes, section 13.03, subdivision 1.)

Most data collected, created, and maintained by law enforcement agencies are classified pursuant to Minnesota Statutes, section 13.82. Certain law enforcement data are always public, certain law enforcement data are never public, and certain law enforcement data may become public depending on the occurrence of certain events. Subdivision 2, provides that arrest data, "created or collected by law enforcement agencies which document any actions taken by them to cite, arrest, incarcerate, or otherwise substantially deprive an adult individual of liberty shall be public at all times." Subdivision 7, classifies investigative data that a law enforcement agency collects or creates in order to prepare a case against a person, as confidential or protected nonpublic while the investigation is active.

Ms. Speltz identified the specific data at issue in the City's opinion request:

There are two separate components of data that would be shared with the traffic education program vendors. 1) Data stored on the mag stripe on the individual driver's license that would be swiped by the officer to input into the system. 2) Data relating to the offense and resulting citation.

The data contained on the mag stripe is as follows: 1. Individuals (sic) Name, 2. Address, 3. Height, 4. Weight, 5. Eye Color, 6. Birth Date, 7. Sex, 8. Expiration Date, 9. License Number. The data from the citation would include the time, date and place of action, the charge and arrest information, the identity of the agency and the unit within the agency issuing the citation, the name, age, sex and last known address for the individual cited, response or incident report number. It is the City's position that all of these elements are classified as public pursuant to Minn. Stat. section 13.82, subd. 2.

All of data elements Ms. Speltz identified, as relating to the offense and resulting citation are arrest data, per section 13.82, subdivision 2, paragraphs (a), (b), (f), (j), and (m), and are public at all times.

Some of the data on the magnetic stripe are also classified as public, pursuant to section 13.82, subdivision 2: name, sex, and address. The remaining elements – height, weight, eye color, birth date, expiration date, and license number – are not specifically classified as public under subdivision 2; they are presumptively public per section 13.03. While data classified under section 13.82, subdivision 2, are always public, law enforcement data that are presumptively public may be classified as confidential or protected nonpublic while there is an active investigation, per section 13.82, subdivision 7. While Ms. Speltz did not state whether the data at issue will be part of an active investigation, it appears unlikely in the scenario she described.

The City did not raise the issue of juvenile drivers in its opinion request and therefore, did not state whether juvenile drivers would be eligible for the online education program. Nevertheless, the Commissioner notes that records related to juvenile drivers may be classified differently than adult drivers, depending upon the circumstances of the offense. For instance, some of the data, including the juvenile driver's name and driver's license data may be classified pursuant to Minnesota Statutes, section 260B.171, subdivision 5. (See also, Minnesota Statutes, section 260B.225.)

Finally, the Commissioner notes that because the data are collected directly from the driver and no data are transmitted to or from the Minnesota Department of Public Safety, the Federal Drivers Privacy Protection Act (18 U.S.C. 2721 et seq.) is not applicable here.

**Opinion:**

Based on the facts and information provided, the Commissioner's opinion on the issue Ms. Speltz raised is as follows:

Pursuant to Minnesota Statutes, section 13.03, subdivision 1, the following data on adult drivers not part of an active investigation that the City of Spring Lake Park Police Department wishes to collect, create, and maintain are public: height, weight, eye color, birth date, expiration date, and license number.

Pursuant to Minnesota Statutes, section, 13.82, subdivision 2, the following data that the Department wishes to collect, create, and maintain are public: the time, date and place of action, the charge and arrest information, the identity of the agency and the unit within the agency issuing the citation, the name, age, sex and last known address for an adult individual cited, response or incident report number.

  
Spencer Cronk  
Commissioner

September 6, 2013